

490.0511.100**Memorandum**

To: Mr. Robert L. Buntjer, Supervisor
Audit Review & Refund Section (MIC:39)

Date: March 6, 1995

From: Thomas Cooke
Staff Counsel

Telephone: (916) 445-6496
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Subject: Lemon Law and Returned Merchandise

We have received your memorandum dated February 10, 1995 in which you state that REDACTED TEXT has requested that the Board approve guidelines that they intend to provide to their dealerships.

The first guideline concerns the "California Lemon Law" and the type of vehicle that is subject to the Law. Civil Code Section 1793.22(e)(2) includes "a dealer-owned vehicle" and a "demonstrator" or other motor vehicle sold with a manufacturer's new car warranty within the definition of a "new motor vehicle." You state that, typically, a demonstrator is sold with the remaining pro rata portion of the manufacturer's new car warranty. The warranty commences when the vehicle is placed into demonstrator inventory. You also ask if it is the intent of the statute that vehicles sold with only a "full" manufacturer's new car warranty are covered under the lemon law? You ask, if that is not the case, is every sale of a used vehicle that still has a residual portion of the manufacturer's new car warranty also covered under the lemon law?

If an automobile manufacturer provides that a new car express warranty is available to a subsequent purchaser of a vehicle which entitles that purchaser to utilize service and repair facilities in the same manner as is available to the original vehicle purchaser, it is our opinion that Civil Code section 1793.22(e)(2) provides that the term "new motor vehicle" applies to the vehicle when owned by a subsequent purchaser during the period that the express warranty on the vehicle can be utilized by that subsequent purchaser.

You also attached a letter to your memorandum from S.T. Sarem, Senior Tax Auditor which was mailed to the REDACTED TEXT. In this letter, S.T. Sarem analyzed the tax consequences when restitution is made or vehicles returned to automobile dealerships under provisions of the Sales and Use Tax Law. Under the Sales and Use Tax Law, there is no tax credit available to a manufacturer who replaces a vehicle, or makes restitution, to a retail customer. The California Lemon Law was designed to provide tax credit to a manufacturer in these situations.

Typically, the manufacturer sells vehicles to a dealership who, in turn, resells the vehicles to retail customers. The manufacturer is normally not a "retailer". The enclosed

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letter dated November 10, 1993 to REDACTED TEXT of the REDACTED TEXT stated a tentative revised Board policy on tax credit due to a manufacturer or dealership when a vehicle was replaced or restitution given. It is my understanding that this revised policy has not yet been adopted by the Board.

TJC:plh

Enclosure